HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 245/2006 (S/S)

Bal Chand Saini

vs

State of Uttaranchal
& others

Approved for reporting

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Not approved for reporting

Date of decision 1.3.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 245 of 2006 (SS)

Bal Chand Saini son of Sri Kallu Singh
R/o Village Santar Shah Daulatpur,
District Haridwar ..... Petitioner

Versus

1. State of Uttaranchal
2. Additional District Educatioin Officer (Basic) Haridwar
3. Nirmala Kanta Presently posted Head Mistress Belari Tehsil, Roorkee ..... Respondents

Sri Arivind Vashist, advocate for the petitioner
Sri Harendra Belwal, Brief Holder for the respondents.

Dated: 1.3.2006

Hon'ble Rajesh Tandon J.

Heard Sri Arivnd Vashist, counsel for the petitioner and Sri Harendra Belwal for the respondents. Both the counsel have submitted that the writ petition be finally decided at this stage.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing his transfer order dated 8.2.2006 passed by the respondent no. 2.

Briefly stated the petitioner is presently posted as Assistant Teacher in Senior Basic School, Belari District Haridwar who has been transferred to Primary School Kasampur vide order dated 8.2.2006.

The main grievance of the petitioner is that his transfer order was passed with mala fide intention. The petitioner is suffering with coronary disorder. Village Belari is adjacent to town Roorkee where the medical facilities are readily available while Kasampur is an interior village.

So far as the transfer order is concerned no interference can be made under Article 226 of the Constitution of India. An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered if the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order.

It has been held by the Apex Court in the case Shilpi Bose and others vs. State of Bihar and others AIR 1991 SC 532 as under:

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from the one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration,

which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

Further the apex Court in State of U.P. v. Goverdhan Lal (2004) 11 SCC 402 has observed as under:

"A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with and order of transfer."

It is well settled that the transfer is an exigency of service. However option for the petitioner to approach the higher authorities is available and the petitioner is at liberty to approach the higher authority.

Liberty is, therefore, given to the petitioner to make representation to the appropriate higher authority within 15 days after receipt of the certified copy of this order, who shall decide the same within one months thereafter. The order of transfer shall remain in abeyance, for a period of six weeks only for a period of three months.

With the aforesaid observations, the writ petition is disposed of. No order as to costs.

1.3.2006

Dhyani

Rajesh Tandon J.